

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN LIEBB,) No. C 04-4214 CW (PR)
)
Petitioner,) ORDER GRANTING RESPONDENT'S
v.) MOTION TO DISMISS PETITION AS
) UNTIMELY
JILL BROWN, Warden,)
) (Docket no. 16)
Respondent.)
_____)

Petitioner Stephen Liebb, a state prisoner incarcerated at San Quentin State Prison (SQSP), filed the present pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 seeking to have expunged from his prison records his 1989 Rules Violation Report (RVR) for fighting with an inmate (Fighting RVR), for which he was found guilty. Petitioner claims that the expungement of this document "will remove a purported 'reason' to find him unsuitable for parole or rescind a finding of parole when it is subjected to [the] governor's review." (Am. Pet. at 2.)

Before the Court is Respondent's motion to dismiss the present petition as untimely under 28 U.S.C. § 2244(d) -- the statute of limitations set by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Petitioner opposes the motion, and Respondent filed a reply.

Having considered all of the papers filed by the parties, the Court GRANTS Respondent's motion to dismiss.

BACKGROUND

The California Department of Corrections and Rehabilitation (CDCR) issued the Fighting RVR after prison officials identified

1 Petitioner as the aggressor in a fight with inmate Lopez on March
2 26, 1989. (Pet'r Ex. A, RVR 81677 dated Mar. 26, 1989.)

3 Petitioner was found guilty at his disciplinary hearing on March
4 31, 1989 and assessed a ninety-day credit loss. (Id.)

5 One hour after the incident involving Petitioner and inmate
6 Lopez, inmate Leabow was fatally assaulted. (Pet'r Ex. D.) Prison
7 officials suspected that Petitioner conspired with other inmates to
8 have inmate Leabow killed. (Pet'r Ex. B.) On May 12, 1989, the
9 CDCR forwarded the matter to the district attorney's office. (Id.)
10 Petitioner was placed in administrative segregation pending an
11 investigation by the district attorney. (Id.)

12 On April 12, 1990, the CDCR issued another RVR officially
13 charging Petitioner with conspiracy to kill inmate Leabow
14 (Conspiracy RVR). (Resp't Ex. 4(G), RVR 92314 dated Apr. 12,
15 1990.) On May 3, 1990, Petitioner filed a state habeas petition
16 with the Solano County Superior Court. (Pet'r Ex. E.) On May 9,
17 1990, the superior court issued a temporary restraining order
18 prohibiting the CDCR from conducting administrative hearings
19 relating to the Conspiracy RVR. (Opp'n Attach. 1.) On September
20 17, 1990, the superior court issued an order prohibiting such
21 hearings while Petitioner remained a suspect in the district
22 attorney's ongoing investigation. (Pet'r Ex. E at 2-3.) On
23 September 12, 1991, the CDCR dismissed the Conspiracy RVR after
24 finding Petitioner not guilty of the charges. (Resp't Ex. 4(G),
25 RVR 92314 dated April 12, 1990.)

26 After the Conspiracy RVR was dismissed, Petitioner claims that
27 SQSP Correctional Counselor II Vaught told him that the Fighting
28

1 RVR would be removed from his file. (Opp'n at 2.) Petitioner
2 alleges that in 1990 and 1991, he "file[d] appeals on the retention
3 of the Rules Violation Report Log # 81677 [Fighting RVR] in his
4 Central File. . . ." (Id. (brackets added).) He claims that he
5 "received no response to these appeals." (Id.)

6 In June, 1998, Petitioner wrote a letter to the warden
7 requesting that the Fighting RVR and the documents relating to the
8 Conspiracy RVR be expunged from his central file. (Pet'r Ex. G,
9 Letter to SQSP Associate Warden.) On June 29, 1998, the warden
10 directed Petitioner to submit his claim through the administrative
11 appeals process. (Pet'r Ex. G, Response from Associate Warden A.P.
12 Kane dated June 29, 1998.)

13 On June 26, 1998, while waiting for the warden's response,
14 Petitioner filed a 602 inmate appeal seeking the expungement of his
15 Fighting RVR (Pet'r Ex. G, 602 appeal dated June 26, 1998.) On
16 July 2, 1998, his appeal was screened out as untimely pursuant to
17 Title 15 of the California Code of Regulations § 3084.6(c), which
18 states: "An inmate . . . must submit the appeal within 15 working
19 days of the event or decision being appealed, or receiving an
20 unacceptable lower level appeal decision." (Pet'r Ex. G, Permanent
21 Appeal Attachment dated July 2, 1998.) Petitioner did not pursue
22 this appeal to the next level in the administrative appeals
23 process.
24

25 On December 27, 2002, Petitioner was granted an Olsen review
26 in order to prepare for his July 17, 2003 parole suitability
27 hearing. (Resp't Ex. 6, Memorandum for Second Level Appeal log no.
28 03-3277 dated Dec. 8, 2003 at 4.) An Olsen review is an

1 administrative procedure which allows an inmate to review his
2 central file. Petitioner had been granted previous Olsen reviews
3 on December 2, 1991, May 8, 1996 and March 1, 1989. (Resp't Ex. 6,
4 Memorandum for Second Level Appeal log no. 03-3277 dated December
5 8, 2003 at 4.)

6 On January 2, 2003, Petitioner filed a 602 inmate appeal
7 alleging that during his December 27, 2002 Olsen review he
8 discovered his Fighting RVR and documents related to his Conspiracy
9 RVR in his central file, which "impact [his] protected liberty
10 interest in parole" and requested that they be removed. (Resp't
11 Ex. 6, 602 appeal dated Jan. 2, 2003.) This appeal was barred as
12 untimely on January 6, 2003. (Id., Permanent Appeal Attachment
13 dated Jan. 6, 2003.)
14

15 On June 10, 2003, Petitioner filed a state habeas petition in
16 the Marin County Superior Court. (Resp't Ex. 4, State Habeas
17 Petition dated June 10, 2003.) On September 2, 2003, his petition
18 was denied for failure to exhaust administrative remedies. (Resp't
19 Ex. 6, Marin County Superior Court decision dated Sept. 2, 2003.)

20 On September 18, 2003, the California Court of Appeal denied
21 Petitioner's state habeas petition stating, "The petition and
22 documents appended thereto fail to demonstrate petitioner's
23 exhaustion of the inmate appeal process." (Resp't Ex. 6, Court of
24 Appeal decision dated Sept. 18, 2003 (citation omitted).)

25 On October 22, 2003, Petitioner filed another 602 appeal
26 requesting that the Fighting RVR and any documents relating to the
27 Conspiracy RVR be removed from his central file. (Resp't Ex. 2,
28 602 appeal log no. 03-3277 dated Oct. 22, 2003.) On the same date,

1 his appeal was denied as untimely at the informal level. (Id.) On
2 October 26, 2003, Petitioner filed a formal level appeal, which was
3 denied as untimely on November 25, 2003. (Id.) On November 11,
4 2003, Petitioner filed a second level appeal, which was denied on
5 December 8, 2003. (Resp't Ex. 2, Second Level Appeal Response log
6 no. 03-3277 dated Dec. 8, 2003.) According to the Second Level
7 Appeal Response, the Fighting RVR and the documents relating to the
8 Conspiracy RVR were appropriate for retention. (Id. at 4.)
9 Petitioner filed an appeal to the Director's level on December 18,
10 2003. (Resp't Ex. 2, 602 appeal log no. 03-3277 dated Dec. 18,
11 2003.) On May 4, 2004, his appeal was denied at the Director's
12 level. (Resp't Ex. 2, Director's Level Appeal Decision dated May
13 4, 2004.) While no relief was afforded to Petitioner at that time,
14 the Chief Inmate Appeals Officer noted that the "confidential
15 section of [Petitioner's] central file will be scheduled for an
16 audit" (Id. at 2.) On May 17, 2004, the Chief Inmate
17 Appeals Officer filed an addendum to the Director's Level Appeal
18 Decision deeming Petitioner's appeal to be granted as to the
19 documents relating to the Conspiracy RVR:
20

21 On May 10, 2004, the confidential section of the
22 appellant's central file was audited. Documentation
23 was indeed discovered that related to an April 12, 1990
24 Rules Violation Report (RVR) for Conspiracy to fatally
25 assault Another Inmate. As the RVR was dismissed, it
26 was determined that the associated documentation should
27 be expunged from the appellant's central file.
28 Classification & Parole Representative (C&PR) C.
 Belshaw concurred with the examiner's finding and
 removed the documents from the appellant's file.

(Resp't Ex. 2, Addendum to Director's Level Appeal Decision dated
May 17, 2004.) The addendum did not address the Fighting RVR,
which was retained in his central file. (Id.)

1 On June 4, 2004, Petitioner filed a state habeas petition in
2 the California Court of Appeal, which was denied on June 10, 2004.
3 (Resp't Ex. 6, 7.) On June 18, 2004, Petitioner filed a state
4 habeas petition in the California Supreme Court, which was denied
5 on September 1, 2004. (Resp't Ex. 8, 9.)

6 On October 5, 2004, Petitioner filed the present petition. He
7 filed an amended petition on June 27, 2005. In his petition, he
8 contends that the Fighting RVR is "inextricably linked" to the
9 Conspiracy RVR. (Pet. at 5.) Petitioner states that he refused to
10 waive his Miranda rights during his disciplinary hearing for the
11 Fighting RVR. (Id. at 7.) Therefore, he "entered no plea and made
12 no statement." (Id. at 5.) As a result, Petitioner submits that
13 the Fighting RVR should be expunged from his central file because:
14 (1) it impacts his liberty interests in parole and (2) it shares a
15 common nucleus of operative facts with the dismissed Conspiracy
16 RVR. (Id. at 7.)

17 The Court ordered Respondent to show cause why the petition
18 should not be granted.

19 On August 14, 2006, Respondent filed a motion to dismiss on
20 the ground that Petitioner had not exhausted his state court
21 remedies because the case numbers of the state habeas petitions
22 Petitioner provided did not address the claim in the present
23 petition. Petitioner conceded that he had provided incorrect case
24 numbers, and he identified the relevant state habeas petitions and
25 administrative appeals. In an Order dated March 14, 2007, the
26 Court denied Respondent's motion to dismiss and ordered Respondent
27 to file an answer. However, in lieu of filing an answer,
28

1 Respondent filed the present motion to dismiss the petition as
2 untimely.¹

3 DISCUSSION

4 The AEDPA, which became law on April 24, 1996, imposes a
5 statute of limitations on petitions for a writ of habeas corpus
6 filed by state prisoners. Prisoners challenging non-capital state
7 convictions or sentences must file a petition within one year of
8 the latest of the date on which: (1) the judgment became final
9 after the conclusion of direct review or the time passed for
10 seeking direct review; (2) an impediment to filing an application
11 created by unconstitutional state action was removed, if such
12 action prevented petitioner from filing; (3) the constitutional
13 right asserted was recognized by the Supreme Court, if the right
14 was newly recognized by the Supreme Court and made retroactive to
15 cases on collateral review; or (4) the factual predicate of the
16 claim could have been discovered through the exercise of due
17 diligence. See 28 U.S.C. § 2244(d)(1).

18
19 The AEDPA limitation period also applies when a prisoner is
20 challenging an administrative decision such as the revocation of
21 good time credit or denial of parole. Redd v. McGrath, 343 F.3d
22 1077, 1084 (9th Cir. 2003); Shelby v. Bartlett, 391 F.3d 1061, 1063
23

24 ¹ The Court finds unavailing Petitioner's argument that
25 Respondent waived the right to file the present motion because the
26 timeliness issue was not raised with the initial motion to dismiss
27 the petition as unexhausted. Rule 5(b) of the Rules Governing
28 Habeas Cases mandates that an answer to a federal habeas petition
"state whether any claim in the petition is barred by . . . a
procedural bar . . . or a statute of limitations." No answer has
been filed in this action; therefore, Respondent has not waived the
right to file the instant motion to dismiss.

1 (9th Cir. 2004). However, administrative decisions are not
2 governed by section 2244(d)(1)(A) because the word "judgment" in
3 that section refers to a judgment of conviction and sentence, and
4 the phrase "direct review" refers to the direct appellate review of
5 that judgment. Id. at 1081. Instead, administrative decisions are
6 governed by section 2244(d)(1)(D).

7
8 Section 2244(d)(1)(D) states that the limitations period to
9 file a federal habeas petition will begin to run on "the date on
10 which the factual predicate of the claim . . . presented could have
11 been discovered through the exercise of due diligence." For
12 administrative appeals, the "factual predicate," which causes the
13 limitations period to run, is the denial of a prisoner's
14 administrative appeal; it is not the denial of the state habeas
15 petition. See Shelby, 391 F.3d at 1066.

16 Here, Petitioner is challenging the constitutionality of his
17 administrative disciplinary hearing relating to his Fighting RVR on
18 March 31, 1989. This date is arguably the date on which the
19 factual predicate of his claim was discovered under
20 § 2244(d)(1)(D). However, under Shelby, the limitations period
21 begins to run the day after the prisoner receives timely notice of
22 the denial of his administrative appeal challenging the
23 disciplinary decision. Id. In the present case, Petitioner claims
24 that he filed 602 appeals relating to the Fighting RVR in 1990 and
25 1991; however, there is nothing in the record that shows that any
26 602 appeals were submitted to prison officials during that time.
27 The record shows that Petitioner filed a 602 appeal on January 26,
28 1998, approximately nine years after he was found guilty of the

1 Fighting RVR. After that 602 appeal was screened out as untimely
2 on July 2, 1998, Petitioner did not pursue his appeal to higher
3 levels. He filed another 602 appeal five years later, on October
4 22, 2003. He received the denial at the Director's level on
5 December 18, 2003 -- a total of fifteen years after he was found
6 guilty on his Fighting RVR. The Shelby court stated that allowing
7 a person an unlimited time to challenge an administrative decision
8 would contravene the finality principle on which the AEDPA is
9 based. Id. at 1065. Accordingly, Shelby supports a finding that
10 the limitations period began to run when Petitioner's time to file
11 his administrative appeal expired. Pursuant to Title 15 of the
12 California Code of Regulations, section 3084.6(c), Petitioner had
13 until April 21, 1989 -- fifteen business days after he was found
14 guilty -- to challenge his Fighting RVR. Because Petitioner did
15 not file a 602 appeal before his fifteen-day time period expired,
16 the limitations period began to run on April 22, 1989. Therefore,
17 he had until April 22, 1990 to file his federal habeas petition.
18 Petitioner did not file the present petition until October 5, 2004
19 -- fourteen years after the limitations period expired.
20 Accordingly, the petition is untimely absent tolling.

21 I. Statutory Tolling

22 AEDPA's one-year limitations period is tolled under
23 § 2244(d)(2) for the "'time during which a properly filed
24 application for State post-conviction or other collateral review
25 [with respect to the pertinent judgment or claim] is pending.'"
26 Dictado v. Ducharme, 244 F.3d 724, 726 (9th Cir. 2001) (quoting 28
27
28

1 U.S.C. § 2244 (d)(2)). Tolling applies to one full round of
2 collateral review. Carey v. Saffold, 536 U.S. 214, 223 (2002).
3 In Carey, the Supreme Court held that the limitations period is
4 tolled during the time between a lower state court's decision and
5 the filing of a notice of appeal to a higher state court. Id. In
6 California, where prisoners generally use the State's "'original
7 writ' system," this means that the limitations period remains
8 tolled during the intervals between a state court's disposition of
9 an original state habeas petition and the filing of a further
10 original state habeas petition in a higher court, provided the
11 prisoner did not delay unreasonably in seeking review in the higher
12 court. See id. at 220-25; accord Nino v. Galaza, 183 F.3d 1003,
13 1006 (9th Cir. 1999) (an application for collateral review is
14 "pending" in state court for "all of the time during which a state
15 prisoner is attempting, through proper use of state court
16 procedures, to exhaust state court remedies with regard to a
17 particular post-conviction application") (citation omitted), cert.
18 denied, 529 U.S. 1104 (2000).² If there is an unreasonable delay
19 between the different levels of collateral review, a petition will
20 be viewed as untimely. See Evans v. Chavis, 546 U.S. 189, 197
21

22
23
24 ² In California, the supreme court, intermediate courts of
25 appeal, and superior courts all have original habeas corpus
26 jurisdiction. Nino, 183 F.3d at 1006 n.2. Although a superior
27 court order denying habeas corpus relief is non-appealable, a state
28 prisoner may file a new habeas corpus petition in the California
Court of Appeal. Id. If the appellate court denies relief, the
petitioner may seek review in the California Supreme Court by way
of a petition for review, or may instead file an original habeas
petition. Id. at 1006 n.3.

1 (2006). Otherwise, a petitioner "would have an unlimited [amount
2 of] time in which to file [a] habeas petition, thus hindering the
3 finality principle." Shelby, 391 F.3d at 1062 (brackets in
4 original).

5 Here, the record shows that Petitioner completed one full
6 round of state collateral review when he filed state habeas
7 petitions in the California Court of Appeal and the California
8 Supreme Court in 2004 -- fifteen years after he was found guilty of
9 the Fighting RVR. The appellate court denied his petition on June
10 10, 2004, and the California Supreme Court did the same on
11 September 1, 2004.

12 However, as mentioned above, the one-year limitations period
13 had expired on April 22, 1990. A state habeas petition filed after
14 the AEDPA's statute of limitations ended cannot toll the
15 limitations period. See Ferguson v. Palmateer, 321 F.3d 820, 823
16 (9th Cir. 2003) ("[S]ection 2244(d) does not permit the
17 reinitiation of the limitations period that has ended before the
18 state petition was filed," even if the state petition was timely
19 filed). Section 2244(d)(2) cannot "revive" the limitations period
20 once it has run (i.e., restart the clock to zero); it can only
21 serve to pause a clock that has not yet fully run. Once the
22 limitations period has expired, "collateral petitions can no longer
23 serve to avoid a statute of limitations." Rashid v. Kuhlmann, 991
24 F. Supp. 254, 259 (S.D.N.Y. 1998).

25 Accordingly, Petitioner's state habeas petitions filed in 2004
26 do not revive the limitations period that has already run.

27 While Petitioner did seek collateral review of his claim in
28

1 state court by filing petitions in the state superior, appellate
2 and supreme courts from 1990 to 2004, the limitations period is not
3 tolled because Petitioner's filing delays between state court
4 petitions were unreasonable. See Evans, 546 U.S. at 197.
5 Petitioner fails to assert facts establishing that the limitations
6 period should be tolled for approximately fourteen years.
7 Accordingly, Petitioner has not alleged any facts suggesting that
8 statutory tolling renders the petition timely.

9
10 Because Petitioner did not meet the one-year requirement for
11 filing the instant federal habeas petition and he is not entitled
12 to statutory tolling, his petition is barred as untimely under 28
13 U.S.C. § 2244(d)(1) unless he can show that he is entitled to a
14 delayed commencement of the limitations period or equitable
15 tolling.

16 II. Delayed Commencement of the Limitations Period

17 Petitioner argues for a delayed commencement of the
18 limitations period pursuant to 28 U.S.C. § 2244(d)(1)(D).
19 Petitioner alleges that he did not discover the factual predicate
20 of the present petition until his Olsen review on December 27,
21 2002. He claims that it was at that time that he discovered that
22 his Fighting RVR and documents related to his Conspiracy RVR were
23 still in his central file. (Resp't Ex. 6, 602 appeal dated Jan. 2,
24 2003.) As a result, Petitioner claims that the commencement of the
25 limitations period should be delayed until May 17, 2004 -- the date
26 he received the Addendum to the Director's level decision --
27 because that was when he exhausted his 602 appeal log number 03-
28 3277 relating to the expungement of his Fighting RVR and documents

1 related to his Conspiracy RVR.

2 However, the factual predicate of Petitioner's claim could
3 have been discovered "through the exercise of due diligence" prior
4 to December 27, 2002. 28 U.S.C. § 2244(d)(1)(D). Petitioner
5 claims that as early as 1990 he began filing 602 appeals requesting
6 the expungement of his Fighting RVR, but that he received no
7 response. In addition, he knew of the factual predicate of his
8 claim in June, 1998 when he wrote a letter to the warden requesting
9 that the Fighting RVR and documents relating to the Conspiracy RVR
10 be expunged from his file. Moreover, he had the opportunity to
11 discover the factual predicate of his claim prior to the December
12 27, 2002 because he conducted Olsen reviews on March 1, 1989,
13 December 2, 1991, and May 8, 1996.

14 Even if Petitioner was aware that the Fighting RVR and the
15 documents relating to the Conspiracy RVR were still in his central
16 file but failed to recognize the possible future implications of
17 those items, his federal habeas petition is untimely. Hasan v.
18 Galaza, 254 F.3d 1150, 1154 (9th Cir. 2001). A prisoner knows of
19 the factual predicate of a claim "when . . . he knows (or through
20 the diligence could discover) the important facts, not when the
21 prisoner recognizes their legal significance." Id. (citing Owens
22 v. Boyd, 235 F.3d 356, 359 (7th Cir. 2000)). Therefore, Petitioner
23 is not entitled to a delayed commencement of the limitations
24 period. Accordingly, his federal habeas is untimely, unless
25 equitable tolling applies.

26
27 III. Equitable Tolling

28 The one-year limitations period can be equitably tolled

1 because § 2244(d) is a statute of limitation and not a
2 jurisdictional bar. Calderon v. United States District Court
3 (Beeler), 128 F.3d 1283, 1288 (9th Cir. 1997), overruled in part on
4 other grounds by Calderon v. United States District Court (Kelly),
5 163 F.3d 530 (9th Cir. 1998) (en banc). "When external forces,
6 rather than a petitioner's lack of diligence, account for the
7 failure to file a timely claim, equitable tolling of the statute of
8 limitations may be appropriate." Miles v. Prunty, 187 F.3d 1104,
9 1107 (9th Cir. 1999). Equitable tolling will not be available in
10 most cases because extensions of time should be granted only if
11 "extraordinary circumstances beyond [a] prisoner's control make it
12 impossible to file a petition on time." Beeler, 128 F.3d at 1288
13 (citation and internal quotation marks omitted)(brackets in
14 original). The prisoner must show that "the 'extraordinary
15 circumstances' were the cause of his untimeliness." Spitsyn v.
16 Moore, 345 F.3d 796, 799 (9th Cir. 2003) (citations omitted). The
17 Ninth Circuit has said that the petitioner "bears the burden of
18 showing that this extraordinary exclusion should apply to him."
19 Miranda v. Castro, 292 F.3d 1063, 1065 (9th Cir. 2002). Whether
20 equitable tolling is in order turns on an examination of detailed
21 facts. Lott v. Mueller, 304 F.3d 918, 923 (9th Cir. 2002).

23 Although Petitioner does not state expressly in his opposition
24 to the motion to dismiss that he is entitled to equitable tolling,
25 he does discuss the doctrine, indicating his awareness and
26 understanding of it. (Opp'n at 6.) The Court finds that it would
27 be futile to provide him leave to amend to allege equitable
28 tolling. All the relevant facts are presented in detail in the

1 record. Based on a thorough review of those facts, the Court
2 concludes that nothing suggests the possibility of equitable
3 tolling. Petitioner alleges no facts from which the Court could
4 infer that his failure to raise his claims prior to the expiration
5 of the limitations period was because of circumstances which were
6 beyond his control and which made it impossible to file a timely
7 federal petition. It was Petitioner's delay in pursuing his state
8 court and administrative remedies, rather than extraordinary
9 circumstances, that led him to exceed the limitations period. See
10 Miranda, 292 F.3d at 1065. The limitations period will not be
11 equitably tolled.

12
13 Accordingly, the petition is dismissed because it was not
14 timely filed under 28 U.S.C. § 2244(d)(1).

15 CONCLUSION

16 For the foregoing reasons, Respondent's motion to dismiss the
17 petition as untimely (docket no. 16) is GRANTED. The Clerk of the
18 Court shall enter judgment in favor of Respondent, terminate all
19 pending motions, and close the file.

20 This Order terminates Docket no. 16.

21 IT IS SO ORDERED.

22 DATED: 3/17/08



23 CLAUDIA WILKEN

24 United States District Judge
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LIEBB,

Plaintiff,

v.

BROWN et al,

Defendant.

Case Number: CV04-04214 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 17, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Denise Alayne Yates
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Stephen Lieb C-60825
San Quentin State Prison
San Quentin, CA 94974

Dated: March 17, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk